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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)
)
Policies and Rules for the) IB Docket No. 98-21
Direct Broadcast Satellite Service)
)

COMMENTS OF TEMPO SATELLITE, INC.

TEMPO Satellite, Inc. ("TEMPO"), by its attorneys, hereby submits its comments in the above captioned proceeding.¹

TEMPO is authorized to operate an eleven-channel DBS system at 119° W.L. and 166° W.L. In March 1997, TEMPO launched its first satellite into 119° W.L. TEMPO also has pending before the Commission an application to transfer control of its DBS system from TCI Satellite Entertainment, Inc. to PRIMESTAR, Inc. ("PRIMESTAR"). That application has been ripe for decision since September 1997.

TEMPO strongly supports the Commission's goal in this *Notice* to "streamline and simplify the Commission's rules governing" DBS by eliminating "unnecessary and duplicative regulation."² These actions would foster a vibrant and innovative DBS service that could respond to dynamic customer demands without burdensome and unnecessary regulatory

¹ Policies and Rules for the Direct Broadcast Satellite Service, IB Docket No. 98-21, *Notice of Proposed Rulemaking*, FCC 98-26 (rel. Feb. 26, 1998) ("*Notice*").

² *Id.* at ¶ 1.

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obligations. Streamlining also would be consistent with the Commission's historic approach of minimal regulation of DBS, which remains a new and rapidly evolving technology.

In contrast to the obvious benefits of the *Notice's* proposal to reduce administrative burdens, however, the Commission's call for comment on whether to create new ownership restrictions is misplaced. The Commission recently considered and rejected as contrary to the public interest restrictions on the common ownership of DBS and other multichannel video programming distribution ("MVPD") interests. Any changes that have occurred since the last time an ownership limitation was rejected merely confirm the wisdom of the Commission's past decisions. Moreover, DBS ownership issues have been exhaustively briefed in two application proceedings currently pending before the Commission. The Commission should maintain the overall goal of streamlining its rules and again reject the imposition of broad restrictions on ownership in this rule making proceeding.

I. The Commission Should Preserve the Flexibility of DBS Operators To Respond to Changing Consumer Demands and Technological Developments

In the *Notice*, the Commission proposes to revise its "current technical rules for DBS in order to ensure that the rules reflect today's technology and to promote maximum technical flexibility for licensees."³ This preserves the Commission's initial approach to the regulation of DBS to give licensees the flexibility to exercise their reasonable judgment to respond to consumer demand. As experience indicates, this concept has enabled the still-nascent DBS service to grow at an unprecedented rate. TEMPO therefore supports the Commission's proposal

³ *Id.* at ¶ 43.

to incorporate DBS Rules into Part 25, consolidate the application and licensing procedures, and eliminate redundant and unnecessary rules.

Technical Rules and ITU Radio Regulations. TEMPO generally supports the proposal to integrate the Commission's Rules with the ITU's Appendices S30 and S30A, which should be used to establish baseline technical standards.⁴ TEMPO also supports retention of Annex 1 with respect to the requirement that applicants demonstrate compliance with coordination limits. As the Commission recognizes, however, DBS operators should continue to have the flexibility to propose modifications to the parameters of the ITU's Radio Regulations. DBS is still an emerging service that must not be frozen in time, but rather should be encouraged to respond to changes in technology and consumer demand provided new interference is not imposed on existing users and providers. To this end, certain assumptions in the ITU plan for broadcast satellite services, such as FM modulation and half-CONUS beams, have not been followed by the industry. Accordingly, TEMPO would support an industry-wide approach to securing necessary modifications to the ITU plans to promote regulatory certainty and to simplify application procedures.

Minimum Technical Standards. TEMPO applauds the Commission's commitment "to allowing systems to maximize their technical flexibility and service quality."⁵ Therefore, TEMPO encourages the Commission not to impose technical requirements that could jeopardize protection to existing systems or potentially arrest the future development of the service. For example, as the Commission recognized, "antenna size is a very important factor to potential

⁴ *Id.* at ¶ 45.

⁵ *Id.* at ¶ 50.

customers of DBS service.”⁶ Moreover, TEMPO has incurred hundreds of millions of dollars in liability to design and implement a satellite service that it believes will best attract consumers. Thus, in light of the ubiquitous presence of small antennas in the U.S., the Commission should reject any proposal to impose antenna performance criteria that would not provide protection to existing systems or allow reasonable development of the service. Existing U.S. systems establish a minimum benchmark that should not be threatened.⁷

Licensee Coordination. TEMPO shares the 119° W.L. slot with EchoStar Satellite Corporation. As a general matter, TEMPO agrees with the Commission’s policy of encouraging licensees at the same orbital location to coordinate among themselves to resolve “any potential or existing interference between their operations.”⁸ Satellite operators typically are best able to resolve differences privately rather than through direct intervention by the Commission. Thus, TEMPO supports the Commission’s proposal for satellite operators to establish network control centers to monitor and coordinate space station activities.

To make coordination a success, the FCC could take several steps which would reduce administrative burdens on applicants and the staff, and facilitate interference-free operation by co-located providers. Applicants for modification of facilities should be encouraged to share proposed technical changes with co-located operators in advance of filing with the FCC. The

⁶ *Id.*

⁷ The Commission also should proceed very cautiously with respect to proposals to share spectrum between DBS providers and planned non-geostationary satellite systems. The NGSO proponents of spectrum sharing must satisfy a heavy burden of demonstrating that objectionable interference will not occur to the millions of existing and future DBS subscribers.

⁸ *Notice* at ¶ 48.

parties would have an opportunity to resolve any issues privately, which could reduce the necessity and burden of protracted contested proceedings. In addition, in the absence of private coordination, the Commission should ensure that certain minimum operational standards are observed for co-located operations, such as cross-polarization isolation for space stations and antennas, which should conform to ITU specifications. Operators also should limit uplink effective isotropic radiated power to levels consistent with the requirements of Section 25.204 of the Commission's Rules. TT&C functions should be cross-polarized from other operators, and circular rather than linear. Further, the Commission should maintain the basic 0.4° orbital spacing between co-located satellites to reduce the potential for interference between operators with cross-polarized channel assignments. These provisions would substantially facilitate the chance of successfully operating two independent and co-located DBS systems on an interference-free basis.

TEMPO submits that a system based on private coordination between potentially affected parties should be carefully monitored by the Commission. Thus, no party should be allowed unilaterally to take action that could adversely affect another operator prior to successfully completing coordination. The Commission must be prepared to enforce its rules vigorously where one party is being threatened with or subjected to unreasonable risks of interference to its operations, and provide a mechanism for the affected party to secure prompt relief.

Due Diligence. TEMPO strongly supports the Commission's proposal to continue to apply its existing due diligence rules.⁹ As the Commission has stated before, the purpose of these requirements is "to ensure that an applicant is committed to constructing DBS satellites and

⁹ See *id.* at ¶ 26.

implementing DBS service in a timely manner.”¹⁰ There have been no significant changes in DBS since the Commission adopted these rules that would effect or undermine this conclusion. Thus, TEMPO urges the Commission to continue to require DBS licensees to comply with its current due diligence rules.

Telemetry, Tracking and Control. DBS operators need the flexibility to use out-of-band frequencies for telemetry, tracking and control (TT&C) for transfer-orbit operations. As the Commission recognizes, there are limited world-wide facilities able to provide these essential short-term services.¹¹ Accordingly, the Commission should not restrict the flexibility of DBS operators to rely upon existing networks for transfer-orbit operations.¹²

Geographic Service Requirements. Without the necessity of government regulation, TEMPO designed, constructed, and launched a satellite that was specifically designed to permit service to Alaska, Hawaii and Puerto Rico.¹³ Accordingly, TEMPO submits that existing market forces will encourage DBS operators to maximize their service offerings and to use the efficiencies of satellite-delivered services to best meet customer demand. Moreover, as DBS service continues to evolve, operators will gain necessary experience to provide the most

¹⁰ *TEMPO Satellite, Inc.*, DA 97-355 at ¶ 18 (rel. Feb. 24, 1997) (“*TEMPO Order*”).

¹¹ *Notice* at ¶ 52.

¹² TEMPO also supports the use of the edges of communications bands for general TT&C functions.

¹³ The Commission asserts in its *Notice* that TEMPO’s license is conditioned “on the requirement that [it] provide service to those states.” *Notice* at ¶ 32. In fact, by order dated February 24, 1997, the Commission merely approved an application of TEMPO to modify its antenna design to allow service to Alaska, Hawaii and Puerto Rico. *TEMPO Order* at ¶¶ 5, 35 (cited in *Notice* at n.78). In any event, TEMPO’s ability to serve these areas from 119° W.L. makes the existence of a regulatory condition unnecessary.

competitive service possible. Operators should continue to have reasonable discretion and flexibility to respond to market dynamics.

II. The Consideration of Cross-Ownership Limitations in this Streamlining Rule Making Proceeding Is Misplaced

The Commission should not consider or adopt restrictions on the ownership of DBS facilities in this proceeding. As Commissioners Furchtgott-Roth and Powell note in their separate statements, consideration of such rules is counter to the general thrust of the *Notice* of streamlining and simplifying DBS regulation. A general rule is unnecessary.

The Commission should reject any call for the imposition of general ownership restrictions. Indeed, the FCC has recently held that restrictions on DBS/MVPD ownership are contrary to the public interest.¹⁴ Recent developments confirm the propriety of that decision: existing DBS service providers have expanded dramatically, and new services are being authorized. Accordingly, the Commission should not impose any unnecessary industry barriers.

Moreover, the Commission already has before it two separate applications that raise the same ownership issues on which the *Notice* seeks comment.¹⁵ In those proceedings, the Commission has accumulated a substantial record consisting of detailed economic analysis and legal arguments from a variety of interests, including other DBS providers, prospective competitors, and public interest groups. In light of this voluminous record, the further

¹⁴ See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9740 (1995).

¹⁵ In addition to the application to transfer control of TEMPO, PRIMESTAR has filed an application to acquire the license held by MCI Telecommunications Corp. for a DBS system at 110° W.L. FCC File No. 106-SAT-AL-97.

consideration of the same issues here is unwarranted and could merely cause further delay in the Commission's consideration of the applications.

III. Conclusion

TEMPO urges the Commission to proceed with its efforts to streamline and simplify DBS rules. Licensees would have flexibility to react and adapt to changing technologies and market conditions for the benefit of all subscribers. Consistent with the laudable theme of this proceeding to reduce regulatory barriers, the Commission should not consider or adopt any new restrictions on DBS/MVPD cross-ownership.

Respectfully Submitted,

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